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June 7, 2010

By Hand CHAMBERS OF
RICHARD M. BERMAN
U.S.D.J.
The Honorable Richard M. Berman
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 650
New York, New York 10007

MEMO ENDORSED

P2

Re: *United States vs. Aafia Siddiqui*
08 Cr. 826 (RMB)

Dear Judge Berman:

We represent defendant Aafia Siddiqui (hereafter Dr. Siddiqui) in the above-captioned proceeding. We write respectfully to request a modification of the current briefing schedule. Currently, defense counsel is to file their sentencing memorandum on or before June 28, 2010. The government is to file their sentencing memorandum on or before July 12, 2010. We request that the briefing schedule be modified by extending the deadlines for both defense and government memoranda by four weeks, which would still allow the sentencing to proceed on August 16, 2010. Under this modified briefing schedule, defense counsel would submit their brief on or before July 26, 2010 and the government would submit their brief on or before August 9, 2010.

We seek an adjournment of Dr. Siddiqui's sentencing because we have been awaiting a final decision as to whether the Pakistan embassy would be providing funds to retain the services of a mitigation expert and forensic psychologist in anticipation of sentencing. Finally, we have been told that the embassy will not be providing funding for these experts. Thus, we must seek funds for these services under the Court Justice Act. For obvious reasons, we have instructed the experts we wish to retain not to commence their services until we are certain we can pay them.

While we understand that the Court has noted that the current briefing schedule is "firm," we would emphasize that we were not in control over the funding situation. Further, the significance of the mitigation services that we seek has increased in importance now that the Supreme Court has decided (only within the last two weeks and in a manner that went counter to the decisions of the majority of Circuits) that the 924(c) count for which Dr. Siddiqui was convicted no longer renders her susceptible to a mandatory minimum sentence of 30 years because the jury was not charged and therefore did not find as an element of the 924(c) offense conduct for which she was convicted that she used a "machine gun." See United States v. O'Brien, 08-1569, 2010 WL 2025204 at *12 (May 24, 2010) (holding that the "machinegun provision" of § 924(c) was an "offense element" not a sentencing factor and therefore, following Hamling, must be charged in an indictment and proved to a jury beyond a reasonable doubt). In the wake of O'Brien, the mandatory minimum sentence to which Dr. Siddiqui is now exposed appears

Honorable Richard M. Berman

June 7, 2010

p. 2

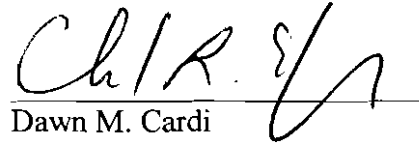
to be only 10 years. Thus, to our view, mitigation services are crucial because the Court may now exercise discretion in favor of our client by imposing a sentence based on so-called Booker factors in the direction of the mandatory minimum of 10 years rather than the much longer prison time deemed applicable by the advisory Sentencing Guidelines analysis presented in the Presentence Investigation Report.

Should we be able to file our sentencing memorandum four weeks later than the current deadline, we anticipate being able to offer substantive reports from mitigation experts and a forensic psychologist accompanying our sentencing memorandum that we hope will be a basis for the Court to impose a Non-Guidelines sentence should the applicable advisory Sentencing Guidelines range frame a longer sentence. In conferring with our proposed mitigation experts and forensic psychologist, we understand from them that an extension of four weeks is the bare minimum that they would require to provide competent reports that we could use in conjunction with our sentencing submission.

We have discussed the proposed modification to the briefing schedule with the government and have obtained their consent.

We thank the Court for its consideration of this request.

Respectfully submitted,



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A further extension of 1 week per side is granted for submissions. Note: Counsel's request seems to disregard the following: (i) the trial ended on 2/3; (ii) there has already been extensive forensic investigation in this case; (iii) counsel is expected to be prepared timely to consider also the Court's need to	
SO ORDERED:	
Date: 6/8/10	Richard M. Berman, U.S.D.J.
review all submissions.	

/s/

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Honorable Richard M. Berman
June 7, 2010
p. 3

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